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JUDICIAL ACTION BY THE PROVINCIAL LEGISLATURE OF MASSACHUSETTS BAY¹.

ORDER ON JOHN & ELIZA MAC LELANDS PETITION, GRANT- ING AN APPEAL.

A Petition of John Mac Leland and Elizabeth his Wife, Shewing that by the Direction of this Court, they brought their Action against Elizabeth Kellum &c for Redemption of a House and Land alienated by the Father & Mother of the Petitioner Elizabeth, Notwithstanding its being Under Entail, at the Inferior Court of Common Pleas for the County of Suffolk held at Boston in January last, that the Said Court made up their Judgment thereon; from which the Petitioners (conceiving it to be wrong) craved Liberty to Appeal to the Next Superior Court but were not allowed their Appeal, And therefore praying the Interposition of the Authority of this Court, either by giving final Judgment on the Said Cause or by allowing the Petitioners Appeal or by giving Such other Relief as they Shall Judge Meet.

Read and

Ordered that the prayer of this Petition be so far granted, That the Petitioners be allowed their Appeal to the Next Superior Court of Judicature, And that the Justices of the Said Court be directed and Impowered to hear & Determine the Said Appeal Accordingly; Provided the Petitioners file their Reasons of Appeal as the Law directs, And give Notice to the Adverse Party at least fourteen Days before the Sitting of the Court. [Passed May 31, 1727.]

ORDER ON THE PETITION OF JOHN YEOMANS ESQR FOR AN APPEAL.

A Petition of John Yeomans Esqr Administrator of ye Estate of his late Wife Elizabeth Yeomans Deed formerly

¹The present editor of the *Province Laws of Massachusetts Bay*, Mr. Melville M. Bigelow, furnishes us, in advance of publication, the following, in illustration of judicial action by the Legislature of the Province of Massachusetts Bay in the first third of the eighteenth century. The Province laws contain records of the kind without number. The following will be found of special interest to legal students of colonial constitutional history.

Elizabeth Shrimton Shewing that Eliza Stoddard late Wife of Simeon Stoddard Esqr and late Widow and Executrix of Col. Samuel Shrimpton late of Boston Deed did by her last Will Devise unto her Granddaughter the Petitioners Intestate And unto the Heirs of her Body lawfully begotten Sundry Houses and Lands and Constituted her said Husband Simeon Stoddard Esqr (to whom She also devised a Legacy of £500) and her Daughter in Law Elizabeth Shrimpton now Eliza Stoddard (to whom She devised a Legacy of one Thousand Pounds) Executors of her Said Will during the Minority of her Said Granddaughter or Untill her Marriage, And to be her Guardians, during that Time, That in Year 1713, There was an Accompnt Exhibited to the Judge of Probates for the County of Suffolk of the Said Estate by the Said Executors; That in april 1720 there was exhibited by the Said Simeon Stoddard & David his Son (who Intermarried with Elizabeth Shrimpton the other Executor) An Accompnt wherein they Charge themselves with the Sum of £24,010. 2. 9 the Real Estate included & pray Allowance for the Sum of £6,318. 18. 4 And accordingly make up Accots with the Said Judge ye 22d of April Aforesd The Petitioners Intestate being then an Infant of the Age of Eighteen Years and none to appear on her part to Examin into the Justice & Reasonableness of the Said Accot Her Guardians being the Said Executors, That the Petitioner Some time after Intermarried with the Said Intestate, and being a Stranger to the Laws and Customs of this Province, and his Affairs Soon after calling him out of the Country, He lapsed the Time Limited by Law for Appeals, That he commenced an Action at the Common Law against the Said Executors in order to correct the Errors in their Said Accompnt, But pending the Said Action the Plantf & Deft agreed to Execute Bonds of Submission for Re-Examining the Said Acct The Arbitramt of the Referrees thereon to be final between them, and thereupon the Case was call'd out and Bonds drawn, but Elizabeth Stoddard one of the Executors refused to Sign them; So that the Petitioner is now without Remedy in the Law, and therefore praying that he may be Enabled Still to Appeal from the Sentence of the Said Judge in allowing the said Accompnt, to the Honble the Lieutt Governour and Council.

Read again together with the Answer of Simeon Stoddard Esqr And the Petitioners Replication and the Same being fully Considered.

Ordered that the Prayer of this Petition be Granted, Any Law Usage or Custom to the Contrary Notwithstanding. [Passed June 9, 1727.]

ORDER APPOINTING TRUSTEES FOR MR ELLIOT'S LEGACY
TO JAMAICA PLAIN SCHOOL.

A Memorial of Joseph Weld of Roxbury, Yeoman Shewing that the Revd Mr John Elliot of Roxbury, by his Deed duly executed and recorded, bearing date the 10th Day of July, 1689, granted & bestowed on the School at Jamaica Plain in the said Town several Pieces of Land to be improved for the Advantage of the Children in that Part of the Town, & accordingly nominated & appointed the Memorialists Father with sundry others of Roxbury and their Heirs Male, Trustees to manage the said Lands for the Purposes aforesaid; But so it is that there now remain none of the Trustees nor their Heirs alive, Excepting the Memorialist that can manage the said Trust; And therefore Praying that this Court would please to appoint three other Persons to join with him in the said Trust, & that they may be fully impowered to fill up any Vacancy that may from Time to Time happen among them by Death or in any other Way.

Read and

Ordered That the prayer of this Memorial be granted, and that Nathaniel Brewer Junr Caleb Stedman and John Weld Junr be Joyned with the Memorialist to whom the Trust within Mentioned is Committed to all Intents & purposes according to the true Meaning of the Donor, and that the aforesaid, Trustees or the Major part of them have power to fill up any Vacancy that may happen among them by Death or otherwise any thing in the aforementioned Deed or Grant of the Revd Mr John Eliot Deceased or any Law Usage or Custom to the Contrary Notwithstanding. [Passed June 16, 1727.]

ORDER ON JOHN CRISDES PETITION VACATING A JUDGMENT
AND ORDERING EXECUTION IN FAVOR OF THE PETITIONER
FOR £78. 4. 2, DUE ON CROSS JUDGMENTS.

It appears that the Petitioner John Crisde is possessed of a Judgement & Execution against the Estate of Samuel Banister (by Assignmt from John Gaud) for the Sum of Thirty five Pounds eight shillings & two pence, & an other Judgment & Execution thereupon against the Estate of Sarah Banister Decd in the Hands of the said Samuel Banister (as the Petitioner is Administr to the Estate of Thomas Banister a Minor Decd) for the Sum of Ninety eight Pounds two shillings & three pence; Amounting in the Whole to One Hundred & thirty three Pounds ten shillings & five pence; And that Mrs. Frances Banister (as Attorney to the above mentioned Samuel Banister) has recovered Judgement against the said John Crisde for the Sum of Fifty five Pounds six shillings & three pence, & no more, And Execution thereupon has been issued & the Petitioners Body being taken in Execution, he has given Security to satisfy the same; so that the Ballance of the said several Judgements is Seventy eight Pounds four shillings & two pence, due from the said Samuel Banister to the Petitioner; Therefore

Ordered, that the Judgment of the Superior Court of Judicature given for the said Samuel Banister against the Petitionr for Fifty five Pounds six shillings & three pence be & hereby is Vacated & rendered Null & Void, & that the Sheriff of the County of Suffolk forthwith discharge the Petitionrs Security for satisfying the Execution issued thereon;

And further

Ordered that the abovesaid Sum of Fifty Pounds six shillings & three pence be struck off from the Judgments obtained by the Petitioner against the said Samuel Banister as abovesaid, And that Execution be issued against the Estate of the said Samuel Banister for Seventy eight Pounds four shillings and two pence (which is the just Ballance of the said several Judgments) Any Law Usage or Custom to the Contrary Notwithstanding. [Passed June 17, 1727.]

ORDER ON YE PETITION OF CAP: JOS: WINSLOW &C, IM-
POWERING HIM AND OTHERS TO BRING FORWARD A WRIT
OF EJECTMENT AS TO LAND TAKEN BY RULE OF COURT.

A Petition of Capt Josiah Winslow his Son Josiah Winslow and Elisha Blackman, Shewing that whereas they were impowered by an Act of the General Court to Contest in the Law ye Validity of a Rule of Court by them enter'd into, at the Superior Court for the County of Bristol in September 1721, Upon an Action of Trespass and Ejectm' originally brought by Timothy Lindall Esqr against James Cudworth and David Cudworth And the Award of the Referee's and the Judgment of the Court thereupon. By reason of their Repeated Mistakes, they have not been able to bring the matter to a New Trial in the Superior Court, And therefore praying they may be again Impowered to Contest in the law ye said Rule of Court, Award of the Referrees and Judgment of the Court And that the Justices of the Said Court may be accordingly Authorized to hear and Determine the Same.

Read and

Ordered that the Petitioner Josiah Winslow in Behalf of himself his Son Josiah and Elisha Blackman, be Allowed and Impowered to bring forward his Writ of Ejectment at any Time within Twelve Months next Ensuing to the Inferir Court of Common Pleas at Bristol for the County of Bristol to try his Title to Such Houses and Lands as have been taken from him by Virtue of the Rule of Court and Judgment thereon mentioned in the Petition, And either Party to have the Benefit as well of an Appeal as of a Review, And the Justices of the Inferiour & Superir Courts respectively are hereby Impowered and Directed to hear & determine the Said Cause According to Law, And the Said Rule of Court and Judgment thereon is no ways to Affect the Title of either Party upon the Tryal, And the Said Josiah Winslow is to have the Benefit of this Order So far as concerns his own Lands Altho the other Petitioners Should disavow the Action any Law Usage or Custom to the Contrary Notwithstanding. [Passed June 16, 1727.]

ORDER IMPOWERING MARY PEDRICK TO SELL LAND.

A Petition of Mary Pedrick of Marble Head Spinster Daughtr of Susanna Pedrick Deceased, who was Daughter to Christopher Latimer of the Said place Decd Shewing that the Said Christopher Latimer in and by his last Will and Testament gave his Houses. And Lands (remaining after payment of his Just Debts) to his Three Daughters, Jane Norden Susanna Pedrick and Elizabeth Walters and to the Heirs of their Bodies begotten and to be begotten forever in Fee Tail, Which Lands lie in Several pieces in Marble-Head and are of inconsiderable Value to the Interested as they now lye, And that the Petitioner needs Some Benefit from the Same for her Support, Which She might have were She permitted to Sel her Part, And therefore praying this Court would enable her to make an Absolute Sale of her Share and Interest in the Said Land for her own Use and Benefit, And that the Entail may be so far taken of as concerns her; the Other Heirs being Consenting thereto, as appears by a Certificate under their Hands;

Read and

Ordered that the Prayer of this Petition be Granted. Any Law, Usage, or Custom to the Contrary Notwithstanding. [Passed June 22, 1727.]

ORDER ALLOWING BENJ. PARSONS TO PROVE A CLAIM AGAINST THE ESTATE OF GYLES DYER.

A PETITION of Benjamin Parsons of Topsham in Great Brittan, Marriner Shewing that he is a just Creditor to the Estate of Gyles Dyer of Boston Mercht Deceas'd for the Sum of Ninety Seven Pounds or Upwards in New-England Money, Praying that he may be allowed to enter his Claim among the Creditors of the Said Dyer wth the Commissrs for receiving the Claims (he having been four years Absent from this Country And no Distribution yet made) The Time allowed by Law for making the Said Claims being Elapsed Notwithstanding.

Read and

Ordered that the Prayer of this Petition be Granted And that the Petitioner be allowed to prove his Debt and Claim

to the Estate of the Said Gyles Dyer decd & the Commissioners for Receiving the Claims thereof are hereby Impowered And Directed to receive the Same, and make Report thereof to the Judge of Probate for the County of Suffolk accordingly, any Law Usage or Custom to the Contrary Notwithstanding. [Passed June 22, 1727.

ORDER ON STEPHEN BOUTINEAU'S PETITION FOR A NEW TRIAL.

A PETITION of Stephen Boutineau of Boston Shop-keeper, Shewing That Letters of Administration on the Estate of Benjamin Bate late of Dorchester Decd being first granted by the Judge of Probate of Wills for the County of Suffolk to his Son Benjamin Bate, were afterwards Revoked and Administration granted to ye Petitioner who Administered on the Said Estate Accordingly, That by a Judgment of Superior Court held at Boston in August last his Administration was Disallow'd and the Power of the Judge to Revoke the First Letters of Administration and grant new ones denied in Effect, And a Deed of a certain Tract of Land being ye Estate of the Said Benj Bate decd Executed by ye Sd Benj Bates Administrator as aforesd after his revoking the Said Letters of Administration allowed to be Good and Effectual (And that Notwithstanding a Mani-fest Fraud in antedating ye Said Deed plainly proved in Court) And that the Petitioner applied to ye Goverour and Council for Relief, Who after Solemn Hearing & Argument thereon, pass'd a Resolve, That the Letters of Administration granted to the Said Stephen Boutineau to Administer on the Estate of the Said Benjamin Bates are Good Valid and Effectual in the Law, And to the End that the Petitioner and the Other Creditors of the Estate of the Said Benjamin Bate Decd may have their Just Benefit by the Said Resolve of Council; Therefore praying that he may be impowered to have another Review of An Action of Trespass and Ejectment Originally brought against John Harradine for Recovery of the Land above Mention'd of which the Said Benjamin Bate died Seized.

Read, together with the Answer of Samuel Billing and John Corey, And the Same being fully Considered.

Ordered that the prayer of this Petition be so far Granted That the Petitioner be Admitted to a New Trial at the next Superior Court of Judicature for the County of Suffolk, And the Justices of the Said Court are hereby Impowered & Directed to hear and Determine the Said Cause Accordingly; Any Law Usage or Custom to the Contrary Notwithstanding. [Passed June 24, 1727.]

ORDER OF NOTICE ON JOHN CRISDES SECOND PETITION FOR
REPAYMENT TO HIM OF £19.

A PETITION of John Crisde of Boston Gardner, Shewing that Pursuant to the Order of this Court on his former Petition, he applied him self to Edward Winslow Esqr Sheriff of the County of Suffolk, Shewing the Order of the Court for his delivering up the Security he had deposited in his Hands for his answering the Execution taken out by Mrs Banister, & that the said Sheriff informed him that in May last he had paid to John Read Esqr Mrs Banisters Attorney the Sum of Nineteen Pounds in Providence Bills which was Part of the Security, Complaining of the Proceedings of the said John Read against him, which he suggests are unfair & unreasonable, And Praying that this Court would Order him to pay back the said Nineteen Pounds to the Petitioner.

Read &

Ordered that the Petitioner serve John Read Esqr with a Copy of the Petition that so he give Answer thereto (if he thinks fit) on Fryday next at ten a Clock in the Morning. [Passed June 21, 1727.]

ORDER ON JOHN CRISDES PETITION.

[THE PETITION of John Crisde.]

Read again together with the Answer of John Read Esqr & it appearing that the Sheriff of ye County of Suffolk, before he was served with the Order of this Court on ye petitionrs first petition, had paid to said John Read Esqr Attorney to Samll Banister the sum of Nineteen pounds, out of the Security given by ye petitioner to Answer the Execution taken out against him by Francis Banister the said Samuel Banisters Attorney which money the petitioner

cannot recover in Law, by wch means the balance of ye several judgments (due to the Petitioner) is Ninety Seven pounds four shillings & two pence

Therefore

Ordered that the Sheriff of ye County of Suffolk Levy the Executions of the Petitioner on the Estate of Samuel Banister for the Sum of Ninety Seven pounds, four shillings & two pence, the Order of this Court on the pet'rs other Petition Notwithstanding. [Passed June 28, 1727.]

ORDER OF MARY ALFORDS PETITION PRAYING FOR PERMISSION TO OPEN A JUDGMENT.

A Petition of Mary Alford, Relict Widow & Executrix of Benjamin Alford Deed Shewing that Andrew Faneuil of Boston Merchant recovered Judgmet against her by Default at the inferior Court held at Boston for the County of Suffolk in March 1725, for £19. 3 Currt Money of New England & hath taken out a Writ of Scire facias against her, returnable to the Court to be held in July next But for as much as one of the Petitioners Sons agreed with Henry Franklyn, who transacted Mr Faneuils Business at that Time, to pay the Bond of £19. 3 on which the said Judgment was founded, And the said Franklyn having Occasion soon after for some Braziletto Wood, took up a Quantity thereof of the Petitioners Son to the Value of £25. 14 Which the Petitioner & her Sons imagined was for payment of the said Bond, & that the said Sum was to be discounted thereon, & therefore never received any other Satisfaction for the said Wood, Praying an Order of this Court to impower her to have a trial of the said Cause in the Law.

Read &

Ordered that the Petitioner serve Mr Andrew Faneuil, with a Copy of this Petition, that he may give in his Answer thereto, if he see Cause, on the first Fryday of the next Fall Session; And all further Proceedings upon the Judgment against the Petitioner are hereby stayed in the mean Time; Any Law, Usage, or Custom to the Contrary Notwithstanding. [Passed June 28, 1727.]

ORDER OF NOTICE ON PETITION OF JOSEPH BROWN IN REGARD TO CERTAIN WRITS OF REVIEW.

A Petition of Joseph Brown of Boston Distiller shewing that having divers Controversies in the Law with Godfrey Malbone of the Colony of Rhoad Island, he brought three Writs of Review against him to the present Superior Court at Boston, & the said Malbone living out of the Province & having no Estate in it he served those Writs on John Overing Esqr. his Attorney; which service the said Court have judged insufficient; And forasmuch as the said Malbone hath commenced cross Actions against the Petitioner; therefore Praying that the Judges of the said Superior Court may be ordered to allow his Actions to proceed to a Trial; or that he may be otherwise relieved in the Premises as this Court shall order.

Read and

Ordered that the Petitioner serve the adverse party or his Attorney with a copy of this petition, that he may shew cause, if any he have, on Monday next why the prayer thereof may not be granted; the writs of review pending between the petitioner and the said Malbone to be suspended in the mean time; any law, usage or custom to the contrary notwithstanding. [Passed February 12, 1730.

ORDER CONTINUING CERTAIN ACTIONS.

On the Petition of Joseph Brown, Praying as enter'd Feby. 12, 1730.

In Council, Read again together with the Answer of John Overing as Attorney & in behalf of Godfrey Malbone, &

Ordered that this Petition be dismissed.

In the House of Representvses Read & Non-concur'd,

Ordered that the Judges of the Superior Court of Judicature be & hereby are directed to continue the Actions of the within named Godfrey Malbone until their next Session within and for the County of Suffolk, that so the Petitioner may have an opportunity to bring forward his Actions at the same time, if he see cause, & that all further Process be staid in the mean time.

In Council; Read & Concur'd. [Passed February 17, 1730.

ORDER OF NOTICE AS TO A NON-RESIDENT.

A Petition of William Anthony of Swanzey Executor of the last Will & Testament of Abraham Anthony Decd shewing that he brought his Writ of Review to be tried at the Superior Court of Judicature now sitting in Boston, against John Anthony of New York; which Writ was abated, the Court not judging the service thereof sufficient, And therefore Praying that, inasmuch as the said John Anthony lives out of the Province & has no Estate here, the Petitioner may be impowered to enter his Action de Novo, and that John Read Esqr attorney to the said John Anthony may be obliged to defend it.

Read &

Ordered that the petitionr serve the adverse party or his attorney John Read Esqr with a copy of the petition that he may shew cause if any he have, on Thursday next, why the prayer thereof should not be granted. [Passed
February 16, 1730.